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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE R. GARY KLAUSNER, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 vs.) No. CR 15-00595-RGK
)
 ANGELO HARPER, JR.,)
)
 DEFENDANT.)

REPORTER'S TRANSCRIPT OF COURT TRIAL
DAY 2, PAGES 95 TO 120
WEDNESDAY, JULY 20, 2016
LOS ANGELES, CALIFORNIA
9:08 A.M.

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, JULY 20, 2016

2 9:08 A.M.

3 - - - -

4
5 THE COURT: Okay. Appearances.

6 THE CLERK: Calling calendar item No. 1, case
7 No. Criminal 15-595-RGK, United States of America versus
8 Angelo Harper, Jr.

9 Counsel, please state your appearances.

10 MS. PALMER: Good morning, Your Honor. Carley Palmer
11 and George Pence for the United States, and with us at
12 counsel's table are AUSA Tom Stout and Special Agent Jonathan
13 Ruiz.

14 THE COURT: Thank you, Counsel.

15 MS. ROSSI: Good morning, Your Honor. Rachel Rossi
16 and Jennifer Uyeda on behalf of Angelo Harper, Jr., who is
17 present in custody.

18 MS. UYEDA: Good morning, Your Honor.

19 THE COURT: Thank you, Counsel.

20 Okay. Both sides have rested on this matter. This is the
21 time for closing argument.

22 Counsel, do you want to be heard?

23 MS. PALMER: Yes, Your Honor.

24 MS. ROSSI: Your Honor, I'm sorry. Can we address one
25 housekeeping matter prior to closing argument?

1 THE COURT: Sure.

2 MS. ROSSI: We just wanted to specify for the record,
3 Government's Exhibit 10, that was the video of the iPad that
4 government was playing, it's a 1-minute-and-47-seconds clip
5 total, and the defense had objected at about 51 seconds of that
6 clip, and the Court had sustained that objection, and we just
7 wanted to clarify that for the record. I believe the Court
8 stated on the record at about 2 minutes, but the whole --

9 THE COURT: That's what I said, it was about 2
10 minutes.

11 MS. ROSSI: Yes, but the whole clip is about 1 minute
12 and 47 seconds, so we just wanted to clarify that on the
13 record.

14 And also, as to Government's Exhibit 9, we objected to the
15 last nine pages, because that corresponded to that portion of
16 the clip that was excluded, but we wanted to clarify it was the
17 last eight pages of that exhibit.

18 THE COURT: The last eight pages or nine pages?

19 MS. ROSSI: The last eight pages of Government's
20 Exhibit 9.

21 THE COURT: Okay.

22 Counsel, want to be heard any on that?

23 MS. PALMER: Yes, Your Honor. The clip that we showed
24 in court was a minute-and-47-second clip of a video that was
25 approximately three minutes long. We understood the Court's

1 ruling to be that everything that we showed in that
2 minute-and-47-second clip was admitted but that no more child
3 pornography after that would be --

4 THE COURT: The two of you may want to look at it,
5 because that's exactly what I said. Whatever was shown in
6 court was received. Now, you're saying we only showed 50-some
7 seconds; you're saying we showed a minute and some. We showed
8 what we showed.

9 MS. PALMER: So to clarify, the entire clip that was
10 displayed has been admitted into evidence?

11 THE COURT: No. I said that part that had been played
12 would be admitted into evidence.

13 MS. PALMER: That was played in court.

14 THE COURT: That was played in court.

15 MS. PALMER: Thank you, Your Honor.

16 THE COURT: Yeah.

17 And let me get to -- and any objection to -- I think I've
18 already ruled on it. Was it Exhibit No. 9, the last eight
19 pages?

20 MS. ROSSI: Yes, Your Honor.

21 THE COURT: Yeah, I think I've already ruled on that.

22 MS. PALMER: Right. I think that objection was
23 overruled, but I think that defense counsel wanted to clarify
24 for the record what they were seeking to keep out.

25 MS. ROSSI: My understanding was it was sustained,

1 Your Honor.

2 THE COURT: I sustained the last eight pages, I
3 thought, of that, yes, of No. 9.

4 MS. PALMER: Of the redacted images, Your Honor?

5 THE COURT: One, two, three, four -- okay, I've got 9
6 in front of me, and that is -- the pages aren't numbered, are
7 they? Counsel, the pages are not numbered?

8 MS. PALMER: They're not, Your Honor. But I think our
9 understanding was that all of the redacted images in No. 9 were
10 admitted because of the context, because they were all in the
11 same conversation --

12 THE COURT: That's right.

13 MS. PALMER: -- as the August 26th posting.

14 MS. ROSSI: Your Honor, we had objected to the final
15 nine pages in court.

16 THE COURT: That's correct. And today you're
17 objecting, you're saying the final eight pages is what you --

18 MS. ROSSI: Yes, Your Honor. And I believe the Court
19 sustained it because it corresponded to the portion of the
20 video that the Court did not play, which was past 51 seconds.

21 THE COURT: Okay. Okay. And the last page -- the
22 last eight pages starts with the page that says what at the
23 top? I want to make sure we're talking about the "All
24 things" -- is that the one with Wednesday, 9:40 p.m.?

25 MS. ROSSI: Yes, Your Honor.

1 THE COURT: Starting there?

2 Okay. So from that page until the end? We all on the
3 same?

4 MS. PALMER: Mm-hmm. Is that the page that ends at
5 the video clip, Your Honor?

6 THE COURT: We're talking about Exhibit 9.

7 MS. PALMER: Yes.

8 THE COURT: And we're talking about the last eight
9 pages, which starts with the date of Wednesday at 9:40 p.m.

10 MS. PALMER: Okay. What is the ruling on that last
11 eight pages, Your Honor?

12 THE COURT: That they would be excluded.

13 MS. PALMER: May the government still introduce
14 evidence about what Agent McCall testified to that he read in
15 the room on those days?

16 THE COURT: Whatever is into evidence already is into
17 evidence, that's correct.

18 MS. PALMER: And --

19 THE COURT: I just did not receive these last eight
20 pages.

21 MS. PALMER: Okay.

22 THE COURT: Okay. Anything else housekeeping-wise
23 before we get into argument?

24 MR. STOUT: Your Honor, could we have five minutes
25 before closing argument? I believe a page that the Court has

1 just informed us is excluded is included in the PowerPoint that
2 we were planning to present, and it would be helpful if we
3 could now delete it.

4 THE COURT: Five minutes?

5 MR. STOUT: Five minutes to delete it from the
6 PowerPoint.

7 THE COURT: Okay.

8 MS. PALMER: Thank you, Your Honor.

9 THE CLERK: All rise.

10 Court is in recess.

11 *(Recess held from 9:14 a.m. to 9:23 a.m.)*

12 THE COURT: Okay. Counsel, we're ready for opening
13 statement?

14 MS. PALMER: Yes, Your Honor.

15 THE COURT: Okay. Opening argument. When I say
16 "opening," it's closing argument, but you also get the last
17 word on it. So go ahead, Counsel.

18 MS. PALMER: Thank you, Your Honor.

19 Your Honor, may I try to turn off that sound?

20 THE COURT: Yeah.

21 MS. PALMER: May I proceed, Your Honor?

22 THE COURT: Yes, please, Counsel.

23 MS. PALMER: Thank you, Your Honor.

24 Defendant is here today because he advertised child
25 pornography, in violation of Title 28 of U.S. Code, Section

1 2251.

2 An advertisement is a posting with the purpose of advising
3 others that child pornography is available.

4 There are three elements to this crime, all of which the
5 government has proven beyond a reasonable doubt in court.

6 First, the defendant knowingly made, printed, published,
7 or caused to be made, printed or published, an advertisement;
8 second, the advertisement offered to receive, exchange, buy,
9 produce, display, distribute or reproduce any visual depiction
10 if the production of the visual depiction utilized a minor
11 engaging in sexually explicit conduct and the visual depiction
12 offered was of such conduct; and three, the advertisement was
13 actually transported across state lines.

14 Here, first, defendant knowingly made or published an
15 advertisement. Defendant posted two comments in the Kik
16 NEPILOVERS chat room that advertised child pornography.

17 First he wrote, "You guys like toddler boys or girls? I
18 have pics and vids of both."

19 Next he posted, "I have tons of pics and vids of little
20 boys and girls. PM me for a chat and trade of kids under six."
21 Trading of the kinds of pictures and videos the defendant
22 posted in that same chat room and in that same conversation,
23 pornographic images of children.

24 Less than a month ago, the Ninth Circuit addressed a
25 similar case in *United States vs. Grovo*. There, the Ninth

1 Circuit upheld the convictions for posts in an invitation-only
2 online message board for sharing child pornography and
3 non-pornographic images of children. The Ninth Circuit
4 affirmed the district court's finding that offering child
5 pornography to a closed community constituted an advertisement
6 of child pornography. The Ninth Circuit rejected the
7 defendant's argument that posts were not advertisements because
8 they were visible only to members of that message board, and
9 the Court held that advertising to a particular subset of the
10 public is sufficient to sustain a conviction.

11 We also know that defendant knowingly made his
12 advertisement. We know that because he didn't place his ad in
13 a Toys-R-Us store or in a Pampers baby model talent search. He
14 wrote what he wrote in an online chat room devoted to
15 nepiophilia. NEPILOVERS, a group devoted to all things toddler
16 and nepi, a group that was used to distribute child
17 pornography, a group where defendant went on, as he told
18 Special Agent Ruiz, to meet with people like him, people who
19 are interested in child pornography.

20 The defendant told Special Agent Ruiz that he knew what
21 "nepi" meant. He knew that it meant pictures of babies and
22 toddlers. And we heard from Agent McCall that when defendant
23 was in the NEPILOVERS chat room, he wrote, "I'm liking the name
24 of this group." The same group where defendant knowingly
25 distributed a child pornography image on October 7, 2015, a

1 crime to which he pled guilty last week, and the same group the
2 members told defendant that they felt misled when they saw
3 defendant's pictures taken with one phone of images displayed
4 on the screen of another phone and mistakenly thought the
5 defendant had produced those images live.

6 Second, we know that defendant's advertisement offered to
7 exchange, display or distribute child pornography.

8 Here, defendant said that he had tons of pics and vids of
9 little boys and girls and invited members of the group to
10 private message him for chat and trade of kids under six.
11 These statements made offers. Defendant offered to display,
12 distribute, receive and exchange. He offered to trade.

13 As the Ninth Circuit found in *Grovo*, posts are not
14 ambiguous merely because they do not contain an explicit
15 declaration that they are offering child pornography. There
16 are no magic words that need to be included to make an
17 advertisement for child pornography an advertisement.

18 Defendant also made these statements to other people. He
19 made them to members of the NEPILOVERS chat room, members who
20 may have joined the chat room through hyperlinks like the one
21 that Agent McCall received in another child pornography chat
22 room in order to access it. Members who had avatars that
23 contained pictures of young children or sexual -- sexual
24 members, and members who, when defendant wrote, "You guys
25 like?" wrote, "Yeah." That's what we heard Special Agent

1 McCall testify he read in NEPILOVERS chat room.

2 These statements offered child pornography. Defendant
3 said them in a child pornography chat room, and he said them in
4 the context of image after image of small children being
5 sexually assaulted. Images like the one that Agent McCall saw
6 Bobby Green post in the NEPILOVERS chat room, images like the
7 one displayed in the admitted portion of the iPad video that
8 Agent McCall took, images that defendant admits portrayed real
9 children.

10 Section 2251 defines child pornography as any visual
11 depiction of a minor engaged in sexually explicit conduct; that
12 depiction was created using a minor engaged in sexually
13 explicit conduct. Sexually explicit conduct means actually or
14 simulated sexual intercourse, or the lascivious exhibition of
15 the genitals.

16 That is what defendant meant when he advertised that he
17 had pictures and videos of infants and toddlers, because the
18 pictures and videos the defendant distributed in NEPILOVERS
19 chat room, and more importantly, the pictures and videos that
20 he offered to distribute, weren't art, they weren't family
21 photos, they weren't products of his imagination; they were
22 child pornography, and they were the product of the sexual
23 abuse of real children.

24 Third, we know the defendant's advertisement was actually
25 transported across state lines, not just because he put it on

1 the Internet, and the Ninth Circuit found, in *United States vs.*
2 *Wright*, that that's enough to satisfy the interstate commerce
3 requirement of the statute, but also because defendant made
4 these advertisements in Moreno, California, and Special Agent
5 McCall received them in Delaware.

6 Finally, we know that defendant is the person who
7 committed this crime. He placed this ad from his Kik account,
8 CM8JIAW4, using his display name of Bobby Green from his home,
9 connected to the IP address as determined by the Kik and Time
10 Warner Cable summons returns that Special Agent McCall
11 received, with his smartphones, the iPhone that was recovered
12 from his person and the HTC phone that was recovered from his
13 bedroom, phones that Special Agent Salaam accessed using the
14 password the defendant gave Special Agent Ruiz, and phones that
15 contained the images that defendant posted to the NEPILOVERS
16 chat room on August 26th, 2015, and October 7, 2015.

17 The little girl on the spiral sheets that was posted in
18 the Kik chat room, that image was found on defendant's iPhone.
19 And the video that Special Agent McCall testified to was found
20 on defendant's HTC. And defendant admitted it.

21 On October 13, 2015, defendant told Special Agent Ruiz
22 that was his account, his user name, his display name, an
23 account that he used to exchange child pornography on Kik with
24 other people like him. He told Special Agent Ruiz that he was
25 Bobby Green. He told Special Agent Ruiz that he was CM8JIAW4.

1 And defendant told Agent Ruiz exactly what he liked about
2 little boys and girls. Sexually explicit images, images like
3 the ones the defendant possessed and distributed, images of
4 child pornography.

5 Last week, defendant pled guilty in this courtroom.
6 Before this Court, under oath, defendant admitted that he
7 possessed child pornography in January 2014. He admitted that
8 he distributed child pornography in October 2015. And now he
9 should be found guilty of advertising child pornography in
10 August of 2015.

11 Thank you.

12 THE COURT: Thank you, Counsel.

13 Counsel.

14 MS. ROSSI: Thank you, Your Honor.

15 This case is about four statements and two images posted
16 on August 26, 2015. The indictment charges advertising, in
17 violation of 18 United States Code, Section 2251(d)(1), on
18 August 26, 2015. Nothing in October is charged in Count 1 of
19 the indictment. And the government has failed to prove this
20 charge for three reasons.

21 First, the government has failed to prove that the
22 jurisdiction or venue is proper. Second, the government has
23 failed to prove that on August 26th Mr. Harper actually
24 advertised to an audience. And third, the government has
25 failed to prove that the images Mr. Harper posted meet the

1 federal definition of child pornography.

2 In the Court's consideration of this case, it's important
3 to focus on the relevant facts that matter.

4 In looking at Government's Exhibit 9, there were four
5 statements and two images posted in the Kik chat room on
6 August 26, 2015. Mr. Harper entered the chat room August 26th
7 at 11:01 a.m. He posted three statements, two images, and then
8 the final statement. This is the charge and the only conduct
9 that the Court should consider.

10 First, the government has not proven either jurisdiction
11 or venue for this offense. Before addressing the merits of the
12 evidence, the Court must look to see whether jurisdiction is
13 proper in the United States and whether venue is proper in the
14 Central District of California.

15 Jurisdiction is proper if the offense or part of the
16 offense occurred within the United States. The Constitution
17 and the Federal Rules of Criminal Procedure require that the
18 government prosecute an offense in the district where the
19 offense was committed. Specifically, the government bears the
20 burden to prove by a preponderance of the evidence that venue
21 exists in this district.

22 For venue purposes, venue is proper when the essential
23 conduct element of the offense occurs in the charging district.
24 So this means that the government must prove that Mr. Harper
25 was in the Central District on August 26, 2015 and when he

1 posted the alleged advertisement to Kik from someplace within
2 the Central District of California.

3 The evidence before the Court is that Kik is a
4 Canada-based company, and the government's own evidence reveals
5 that Mr. Harper accessed Kik from a mobile device, not a
6 desktop computer; specifically, an Android mobile phone, a
7 phone that could have been anywhere in the world on August 26,
8 2015. The government has presented no evidence as to where
9 Mr. Harper was on August 26th, where any of these multiple
10 phones were on August 26th, or where the alleged advertisement
11 was posted from on August 26, 2015.

12 Further, if the Court turns to the government's own
13 evidence, Exhibit 1 are the Kik records for the CM8JIAW4 Kik
14 account for Mr. Harper, and the Court can flip through those
15 records and can see that there is no indication of what IP
16 address was accessed on August 26, 2015. The records begin in
17 September of 2015. The records that the government presented
18 to establish an IP address linked to Mr. Harper's address begin
19 in September of 2015. And again, as the Court remembers, an IP
20 address would show -- or the Kik records would show that
21 Mr. Harper had logged into the account on a particular day.

22 And if the Court turns to Government's Exhibit 3, these
23 are the Kik records for Mr. Harper's second Kik account, the
24 Money Film Music account. And if the Court turns to Bates 2121
25 in Government's Exhibit 3, it will see the records specifically

1 for the Money Film Music account, and it will see that there is
2 no indication of where the account was accessed on August 26,
3 2015.

4 There is no evidence before this Court showing that the
5 August 26th posts were made from the IP address in Moreno
6 Valley or anywhere else in the Central District or even in the
7 United States. For this reason alone, the government has
8 failed to prove that venue is proper in this district or that
9 there is jurisdiction in any U.S. court over this offense. The
10 Court's analysis must end here, and the Court should enter a
11 judgment of not guilty based on failure to prove venue.

12 However, even if the Court turns to the elements of the
13 offense, the government has not proven advertisement beyond a
14 reasonable doubt. And the government already boiled down the
15 elements of the offense, and I have the model instruction up
16 here on the PowerPoint, but the relevant elements that the
17 government has not proven are, number one, an advertisement,
18 and number two, that Mr. Harper specifically advertised what
19 qualifies as child pornography under the federal definition.
20 And as the Court knows, the Court must make this determination
21 beyond a reasonable doubt. The Court must determine whether
22 there's sufficient evidence beyond a reasonable doubt.

23 As cited by the government, an advertisement to a
24 particular subset of the public is sufficient to sustain a
25 conviction under the statute. That's the *United States vs.*

1 Grovo case. That means that the government must prove an
2 advertisement. There needs to be some subset of the public or
3 some audience in the chat room on August 26th, 2015. And the
4 government has failed to prove that the four statements and two
5 images on August 26th were publicized to any audience
6 whatsoever.

7 Other courts in this district have found similar
8 definitions of advertisement, noting that there must be some
9 audience posted to. No court has ever held that a posting made
10 to a group of no one qualifies as an advertisement. There must
11 be an audience. There must be at least some subset or some
12 small group. And the Court knows that Kik is a mobile
13 messaging social application where there are chat groups with
14 up to 50 people in them. However, there could be anywhere from
15 one person to 50 people maximum in that chat room.

16 Agent McCall testified that he only logged into the chat
17 room October 8th and October 11th of 2015. Agent McCall
18 himself was not present in the chat room on August 26, 2015.
19 And if the Court looks at the screen shots, it reveals
20 Mr. Harper logged into the chat room on August 26, 2015, he
21 posted three statements, then two images, then he posted a
22 final statement, and then the Court can see there is silence in
23 the chat room for about three weeks. And then on September
24 13th, 2015, Mr. Harper exits the chat room at 11:10 p.m.
25 During that time frame, the screen shots do not show anyone

1 else entering the chat room. The screen shots do not show
2 anyone else exiting the chat room. The screen shots do not
3 show any other posts, comments, or anything else depicting
4 another person in that chat room. The government has not
5 proven that there was an advertisement made to anyone of the
6 public at all.

7 Third and finally, the government has to prove that
8 specifically what Mr. Harper advertised qualifies as child
9 pornography. The government must prove that Mr. Harper
10 advertised an actual image or images. This is to ensure that
11 the Court meets the -- that the government meets the elements
12 that the images advertised were of child pornography and the
13 images advertised were of real children.

14 The statute does not prohibit advertising what qualifies
15 as child pornography but does not depict an actual child, and
16 likewise, the statute does not prohibit advertising images of
17 real children that do not qualify as child pornography under
18 the federal definition.

19 So the question becomes, what images are the government
20 alleging Mr. Harper advertised? Based on the charges in the
21 indictment, again, the Court must look to the two images posted
22 in August 26, 2015. And the government must prove that those
23 two images are real children and depict federally defined
24 sexually explicit conduct. And as the government noted,
25 sexually explicit conduct would require either sexual

1 intercourse or the genitals or pubic area of the minor. I'm
2 sorry. Lascivious exhibition of the genitals or pubic area.
3 And the government has chosen to present to the Court a blurry
4 video which was taken filming an iPad screen which depicted
5 screen shots of images, which images were allegedly posted from
6 an HTC phone but taken from a picture of the screen of an
7 iPhone of the original image. That is the evidence before the
8 Court. That is five layers of cameras on digital devices
9 between the Court and the actual images Mr. Harper is alleged
10 to have advertised. And if the Court cannot see what is
11 required to be met in order to prove these elements, then the
12 government has failed to meet their burden.

13 The first image shown in -- or posted in August 26, 2015
14 depicts the backside of a child. This is not the lascivious
15 display of the genitals or pubic area. That image is not child
16 pornography. The second image posted on August 26, 2015,
17 there's no evidence in the record whatsoever that it was of an
18 actual child. Accordingly, the government has failed to prove
19 that on August 26, 2015, Mr. Harper advertised images that meet
20 the definition of child pornography.

21 Now, the government has asked this Court to consider that
22 Mr. Harper advertised also in October, that the video in
23 October is relevant to the Court's consideration. And as we
24 stated, August 26th is what is charged in the indictment. If
25 the government were to argue today that Mr. Harper intended to

1 advertise images or videos in October, that would be a
2 constructive amendment or a fatal variance from the charges in
3 the indictment. The indictment was clear, and the government
4 stated: Mr. Harper was alleged to have advertised only on
5 August 26th, and he was alleged to have distributed in October
6 of -- I'm sorry, 2015, and distributed in October of 2015.

7 Even if the Court were to consider the October evidence,
8 the government's argument doesn't make sense. The government
9 has provided no evidence that Mr. Harper was in possession of
10 the October video back on August 26, 2015. The government has
11 presented no evidence whatsoever that Mr. Harper knew of that
12 video on August 26, 2015.

13 The images and videos that were found on Mr. Harper's
14 phones were found on October 13th, 2015, the day of the search
15 warrant. And when the Court asked the witness when those
16 images or video were placed on the iPhone or when they were
17 created, the witness did not know.

18 There was no evidence presented to show that Mr. Harper
19 possessed the October 7th video or any October images on
20 August 26, 2015. He could not have intended on August 26 to
21 advertise images he did not yet possess or even know existed.

22 So again, Your Honor, before the Court is just four
23 statements and two images. What is not before the Court is
24 proof beyond a reasonable doubt that this evidence constitutes
25 advertising child pornography in violation of Section 2251(d).

1 First, the government has failed to prove jurisdiction or
2 venue. Second, the government has failed to prove that on
3 August 26th Mr. Harper advertised to any audience. And third,
4 the government has failed to prove that the posted images on
5 August 26th, the images that are the subject of the
6 advertisement, qualifies as child pornography under the federal
7 statute. And for these reasons, Your Honor, we ask that the
8 Court find Mr. Harper not guilty of Count 1.

9 THE COURT: Thank you, Counsel.

10 MS. PALMER: May I proceed, Your Honor?

11 THE COURT: Yes, please.

12 MS. PALMER: Defense counsel told you that there are
13 three reasons why the government didn't meet its case. First,
14 it said that jurisdiction wasn't proper, that the government
15 didn't establish that the defendant committed these crimes on
16 August 26, 2015, in the Central District of California.
17 However, we know the defendant lives in Central District of
18 California. He goes to school in the Central District of
19 California. He posts his child pornography --

20 MS. ROSSI: Objection, facts not in evidence.

21 THE COURT: The last part about going to school, I
22 don't believe was in evidence.

23 MS. PALMER: Thank you, Your Honor. Withdrawn.

24 He lives in the Central District of California. He has
25 phones that he keeps in Central District of California. He

1 said that he conducts his child pornography vid- -- his child
2 pornography activity from his HTC phone, which is in his
3 bedroom, which he told Special Agent Ruiz that stays usually on
4 the footstool in his bedroom, in a room that he lives in by
5 himself. We also have evidence from Kik that he accessed that
6 account 28 times, also from an IP address in Riverside,
7 California.

8 The second reason that the defense attorney gave was that
9 the government had not proved the defendant had advertised to
10 an audience. But we know he had an audience. At the very
11 least, we know he had the audience of Special Agent McCall. We
12 also know, based on Special Agent McCall's testimony, that
13 other members responded to the pictures that defendant posted.
14 He asked, "Do you guys like?" And people responded, "Yeah."
15 Someone responded, "Yeah." He also told Special Agent McCall
16 that other people in the chat room had indicated that they felt
17 misled by images he had posted in that chat room.

18 It would appear that defense counsel is trying to add an
19 element of simultaneousness to the statute that simply isn't
20 there. This is similar to one of the arguments that was put
21 forth by the defendants in *Grovo*, where they tried to add an
22 element of simultaneousness to conspiracy for advertisement.
23 And the Ninth Circuit found that that wasn't required. If an
24 advertisement is put up on a billboard in August and someone
25 drives by it in October, that's still an advertisement.

1 And finally, defense counsel argues that the images that
2 defendant posted on August 26, 2015, were not child
3 pornography. The government contends that they are. It's been
4 stipulated to that at least one of those images contained a
5 real child. The images contain images of sexual contact with
6 children and the lascivious display of children's genitals.
7 But more than that, the government doesn't have to prove that
8 the images that defendant posted on August 26th are child
9 pornography. It has to prove that the images that he
10 advertised are child pornography, that that's what he meant
11 when he said, "I've got pictures and videos," in a group called
12 NEPILOVERS which defendant admitted was devoted to the exchange
13 of child pornography images of babies and toddlers. For
14 that --

15 May I have a moment to confer with counsel, Your Honor?

16 *(Government counsel confer privately.)*

17 MS. PALMER: Additionally, Your Honor, defendant
18 admitted to Special Agent Ruiz that he believed that there were
19 real children in the images in which he dealt. And for that
20 reason, Your Honor, the government submits that there is only
21 one verdict consistent with the law and the facts, and that is
22 guilty.

23 Thank you.

24 THE COURT: Okay. Thank you, Counsel.

25 Okay. In this particular matter, the -- first of all, let

1 me tell you that both sides argued their case very well. The
2 Court is going to find the defendant guilty of Count 1. The
3 Court finds that beyond a reasonable doubt there is sufficient
4 evidence to support that verdict.

5 Counsel, what's the date for sentencing on the other
6 matter?

7 THE CLERK: October 17th.

8 THE COURT: October 17th? Want to put this over to
9 the same date, October 17th?

10 MR. PENCE: Yes, Your Honor.

11 MS. ROSSI: That's fine, Your Honor.

12 THE COURT: Okay. Put this over till October 17th.
13 Okay. Anything further, either side?

14 MS. PALMER: No, Your Honor. Thank you.

15 MS. ROSSI: No, Your Honor.

16 THE COURT: Okay. We'll be in recess.

17 THE CLERK: All rise.

18 Court is in recess.

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20 *(Proceedings concluded at 9:52 a.m.)*

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1 CERTIFICATE

2
3 I hereby certify that pursuant to Section 753,
4 Title 28, United States Code, the foregoing is a true and
5 correct transcript of the stenographically reported proceedings
6 held in the above-entitled matter and that the transcript page
7 format is in conformance with the regulations of the
8 Judicial Conference of the United States.

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10 Date: January 24, 2017
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13

14 /S/ SANDRA MACNEIL

15 Sandra MacNeil, CSR No. 9013
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